

W-2 Contract Issues from the Pre-Contract Conference Call of 11/12/03

1. Contract Item:

5. Notices Relating to Termination, Breach, Noncompliance, or Failure Penalty

Any notice or demand relating to termination, breach, noncompliance, or failure penalty shall be in writing and either delivered personally, by fax followed by certified mail, or by certified mail, return receipt requested, addressed to the **Department's** Contract Manager. Notices sent by fax must be followed up by certified mail or by regular mail within twenty-four (24) hours of the fax send time. The mail follow-up must be the same documents as the fax (no additional or changed documents may be included in the mailed follow-up).

Issue: Agencies commented that the language is one-way. It describes how the W-2 agency is to give notice to the Department in these special instances, but not how the Department is to give notice to the agency.

DWD: This is an inadvertent result of the drafting. It will be fixed by deleting the word "Department's" and inserting a cross-reference to Contract section 3 (Contract Manager).

2. Contract Item:

11.5.2.1 Modifications – Substantive or Others

If the Department determines that a substantive change is needed to the W-2 Plan or a change, the Department shall notify the W-2 agency. The W-2 agency shall, within ten (10) business days of notification by the Department, submit a written proposed W-2 Plan Modification to the Department's Contract Manager. The Department's Contract Manager shall notify the W-2 agency of the Department's approval or disapproval of the proposed W-2 Plan Modification within ten (10) business days.

Issue: The words "or a change" seem to be redundant.

DWD: We agree. Those words will be deleted.

3. Contract Item:

20. Termination of Contract

20.1 Without Cause

Either Party may terminate the Contract without cause upon written notice effective at the end of the first month after one hundred and twenty (120) calendar days.

Issue: Dane County commented by email that this language is unclear as to whether termination is meant to become effective at the end of the month in which the 120th day occurs or the end of the month after that.

DWD: The language will be changed to clearly reflect that termination becomes effective at the end of the month in which the 120th day occurs.

4. Contract Item:

25. Minority Business Enterprises

25.1 State Goal

The State of Wisconsin has a goal of placing five percent (5%) of its total purchasing dollars with certified minority business enterprises ("MBE"). (See sections 15.107(2), 16.74(4), 16.755 and 560.03(2) of the Wisconsin Statutes.) The W-2 agency is encouraged to purchase services and supplies from MBEs certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development. When it is possible for a W-2 agency to enter into a subcontract with an MBE and obtain the same or equivalent goods or services at the same or equivalent cost, the W-2 agency shall subcontract with the MBE.

Issue: The highlighted sentence appears to simply repeat the substance of the sentence before it.

DWD: This appears to be the inadvertent retention of two versions of the same sentence. The last sentence will be deleted.

5. Contract Item:

27.3 State or Federal Audit Exceptions

The Parties to the Contract agree that the W-2 agency shall be held liable for any State or federal audit exceptions in which acts or omissions of the W-2 agency are cited and the W-2 agency shall return to the Department all payments made under the Contract to which exception has been taken and proven or which have been disallowed because of such an exception.

Issue: Some agencies asked that, in addition to the language above, language should be added to the contract to state that the W-2 agency will be held harmless if it is cited for any policy or procedural exception that was provided to the W-2 agency in writing by DWD.

DWD: This concept is already in the contract, in the last sentence of section 37 (Indemnification), however it is not sufficiently broad. Language will be added to cover audit findings that result due to an agency following the Department's written policy or instruction.

In the event of a lawsuit challenging the validity of an aspect or provision of W-2, the Department will defend such lawsuit.

6. Contract Item:

Appendix A, first page, last paragraph of Base Allocation:

In order to address the likely change in caseload over the period of the contract, the Department, as in previous contract periods, is reserving the right for funding to be re-allocated to W-2 agencies based on more recent caseload information. Service funds may also be re-allocated based on significant caseload shifts.

Issue: Agencies expressed concern over the possibility of the Department adjusting the funding amount for services; they would like assurance that the Department will work with them prior to implementing any adjustment.

DWD: The Department will add language to Appendix A to clarify its intent to work with the W-2 agencies prior to implementing any funding adjustment.